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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,597	05/17/2004	Uta Nauert	UTA6535.007	3596

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ZIOLKOWSKI PATENT SOLUTIONS GROUP, LLC (ZPS)
14135 NORTH CEDARBURG ROAD
MEQUON, WI 53097

EXAMINER

SWIATEK, ROBERT P

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/709,597	Applicant(s) NAUERT, UTA	
	Examiner Robert P. Swiatek	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-18 is/are allowed.
- 6) ☒ Claim(s) 1-9, 19, 20, 22-27 and 29-33 is/are rejected.
- 7) ☒ Claim(s) 21 and 28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5-21-04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 19, 20, 22-27, 29-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holland (US 4,546,730) in view of Tseng (US 6,418,950 B1). The Holland feed station includes feed container 12, partitioned so it can contain both water and food, and post 30 extending upwardly from the container to support an umbrella 62, 64. The umbrella is not disclosed as being retractable, although it resembles one that is. The patent to Tseng discloses a retractable umbrella including a tube 10 upon which an actuator 30 is disposed. Sliding the actuator 30 up or down the tube until the actuator engages an upper or lower latch 80 causes the umbrella canopy to lock in an opened or closed position. Umbrella canopy of Tseng interconnects with the actuator 30 via a first link 14 and a second link 40. It would have been obvious to one skilled in the art to employ the retractable umbrella canopy and actuation mechanism of Tseng in place of the (presumably) fixed umbrella of Holland, in order to allow the umbrella to be folded for transportation or storage and to allow the umbrella/feeder combination to be used indoors where a deployed umbrella is unnecessary. It is noted that the container 12 of Holland *could* contain a liquid—such as a sugar solution—attractive to hummingbirds. As to claims 6, 23-25, 30, use of graphic designs on the umbrella and container

Art Unit: 3643

of the combination, as well as the specific color of the umbrella, would have been obvious to one skilled in the art wishing to enhance the product's aesthetic appeal.


Claims 32, 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 32, line 2, "the shade" lacks a prior antecedent basis; in claim 33, lines 2, 3, "the means for providing sugar solution" lacks a prior antecedent basis.

Claims 9, 11, 27-33 are objected to because of the following informalities: In claim 9, line 1, "is" should be deleted; in claim 11, line 1, "feeder" should be changed to -feeding- and the claim must end with a period; in claim 27, line 3, -a- should be inserted after "retaining"; in claim 28, line 2, -a- should be inserted before "sugar"; in claim 30, line 3, "are" should be changed to -is-; in claim 31, line 2, -a- should be inserted before "sugar." Appropriate correction is required.

Claims 21, 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The abstract of the disclosure is objected to because in line 1, "is disclosed" should be deleted. Correction is required. See MPEP § 608.01(b).

RPS: 0703/308-2700
8 December 2004


ROBERT P. SWIATEK
PRIMARY EXAMINER
ART UNIT ~~333~~ 3643